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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[C-570-942]

Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (“the Department”) has completed its administrative review of the countervailable duty order on certain kitchen appliance shelving and racks (“Kitchen Racks”) from the People’s Republic of China (“PRC”) for the period January 7, 2009, through December 31, 2009.<sup>1</sup> On October 7, 2011, we published the preliminary results of this review.<sup>2</sup> We provided interested parties with an opportunity to comment on the *Preliminary Results*. Our analysis of the comments submitted as well as incorporation of our post-preliminary analyses led to a change in the net subsidy rates. This review covers multiple exporters/producers, two of which are being individually reviewed as mandatory respondents. We find that the mandatory respondents, Guangdong Wireking Housewares & Hardware Co., Ltd. (“Wireking”) and New King Shan (Zhu Hai) Co., Ltd. (“NKS”), received countervailable subsidies during the POR. Their countervailing duty (“CVD”) rates have been used to calculate the rate applied to other firms subject to this review, as listed below in the section entitled “Final Results of Review.”

EFFECTIVE DATE: (Insert date of publication in the *Federal Register*.)

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<sup>1</sup> For further explanation of this period, see “Period of Review” section of this notice.

<sup>2</sup> See *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 76 FR 62364 (October 7, 2011) (“*Preliminary Results*”).

FOR FURTHER INFORMATION CONTACT: Jennifer Meek or Nancy Decker, Office of AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2778 and (202) 482-0196, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

Following the *Preliminary Results*, the Department requested additional information from the Government of the PRC (“GOC”) and Wireking on certain subsidy programs. The Department sent a supplemental questionnaire to Wireking and two supplemental questionnaires to the GOC. Wireking submitted its timely response on November 21, 2011, and the GOC submitted timely responses on November 28, 2011, and January 4, 2012. The Department released its post-preliminary analysis on March 2, 2012. *See* Memorandum from the Team to Paul Piquado, Assistant Secretary for Import Administration, entitled “Post-Preliminary Analysis Memorandum” (March 2, 2012) (“Post-Preliminary Analysis”).

In the *Preliminary Results*, we invited interested parties to submit briefs. We received case briefs from Nashville Wire Products Inc. and SSW Holding Company, Inc. (collectively “Petitioners”), Wireking, NKS, and the GOC on March 13, 2012. We received rebuttal briefs from NKS, the GOC, and Petitioners on March 19, 2012.

##### Scope of the Order

The scope of the order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens. Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are

connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and sub-frames (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- Side racks from 6 inches by 8 inches by 0.10 inch to 16 inches by 30 inches by 4 inches; or
- Sub-frames from 6 inches by 10 inches by 0.10 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.20 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of the order is shelving in which the support surface is glass.

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.40, 7321.90.60.90, 8418.99.80.60, 8419.90.95.20, 8516.90.80.00, and 8516.90.80.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

### Period of Review

We are conducting our analysis in this review on an annual basis, *i.e.*, for the entire calendar year 2009. However, the duties calculated will be applied as follows: for refrigeration shelving duties will be applied to entries from January 7, 2009, through May 6, 2009, and September 9, 2009, through December 31, 2009; for oven racks duties will apply to entries from September 9, 2009, through December 31, 2009.<sup>3</sup>

### Analysis of Comments Received

All issues raised in the GOC's, Petitioners', Wireking's and NKS' briefs are addressed in the Memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, entitled "Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China," (April 4, 2012) ("Issues and Decision Memorandum"), which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The

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<sup>3</sup> Entries of certain refrigeration shelving occurring during the period May 7, 2009, through September 8, 2009, were not suspended for CVD purposes due to the termination of provisional measures. Entries of certain oven racks occurring before September 9, 2009, were liquidated at the time of the CVD order because the International Trade Commission ("ITC") found threat of material injury on certain oven racks. *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Order*, 74 FR 46973, 46974-75 (September 14, 2009) ("CVD Order").

signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

#### Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (“the Act”), provide that the Department shall apply “facts otherwise available” if necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

For purposes of these final results, we have continued to rely on facts available and to draw an adverse inference, in accordance with sections 776(a) and (b) of the Act, for the below issues. For a full discussion of these issues, *see* the Issues and Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences” section.

#### 1. *Non-Cooperative Companies*

As explained in the *Preliminary Results*, two companies in this review, Asia Pacific CIS (Wuxi) Co., Ltd. (“Asia Pacific CIS”) and Jiangsu Weixi Group Co. (“Jiangsu Weixi”), did not provide a response to the Department’s quantity and value (“Q&V”) questionnaire issued during the respondent selection process. *See Preliminary Results*, 76 FR at 62365. We continue to find that these non-cooperating companies withheld requested information and significantly impeded

this proceeding. Specifically, by not responding to requests for information concerning the Q&V of their sales, the companies impeded the Department's ability to select the most appropriate respondents in this review. Thus, we are continuing to base the CVD rate for these non-cooperating companies on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's Q&V questionnaire, these companies did not cooperate to the best of their ability in this review. Accordingly, we continue to find that an adverse inference is warranted to ensure that the non-cooperating companies will not obtain a more favorable result than had they fully complied with our request for information.

Consistent with our practice, we have computed the total adverse facts available ("AFA") rate for these non-cooperating companies using program-specific rates calculated for the cooperating respondents in the instant review or prior reviews of instant case, or calculated in prior CVD cases involving the country under review, in this case the PRC. *See Preliminary Results*, 76 FR at 62366. We continue to find this information to be corroborated in accordance with section 776(c) of the Act. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. As stated in the *Preliminary Results*, the rates used by the Department as AFA are reliable because they were calculated in this review or in a recent final CVD determination using information about the same or similar programs and are relevant because they are actual calculated subsidy rates for programs from which the non-cooperating companies could have received a benefit. *Id.* at 62366-67. In the absence of record evidence because of the non-cooperative companies'

decision not to participate in the review, the Department has corroborated the AFA rates that it has selected to the extent practicable as required by section 776(c) of the Act.

2. *GOC - Wire Rod*

The Department sought information from the GOC about the producers of the wire rod purchased by Wireking and NKS. In particular, for any of the wire rod producers that are not majority-owned by the GOC, the GOC was asked, *inter alia*, to trace back the ownership to the ultimate individual or state owners. *See* the Department's Original Questionnaire (January 28, 2011) at Section II/Appendix 3. The GOC provided information indicating that several wire rod producers were owned in whole or in part by other companies but failed to provide the ownership of those other companies. For one wire rod producer, the GOC failed to provide any ownership information. For another wire rod producer, the GOC did provide ownership information, but the information provided concerning the owners' status as officials of the Communist Party of the PRC was incomplete.

Consistent with our findings in the Post-Preliminary Analysis, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" pursuant sections 776(a)(1) and (a)(2)(A) of the Act in making our final determination. *See* Post-Preliminary Analysis at 4-8. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. *See* Post-Preliminary Analysis at 7-8. In these final results, we continue to apply the adverse inference that the producers of the wire rod used by Wireking and NKS are government authorities that provided a financial contribution as described under section 771(5)(D)(iv) of the Act. *Id.*

3. *GOC- Steel Strip*

The Department sought information from the GOC about the producers of the steel strip purchased by Wireking and NKS to determine whether the steel strip suppliers are “authorities” within the meaning of section 771(5)(B) of the Act. The GOC stated that the producer from which NKS sourced steel strip is majority-owned by the GOC, but, despite multiple requests, refused to provide ownership information of the producers that supplied Wireking. *See* Post-Preliminary Analysis at 2-4.

Consistent with our findings in the Post-Preliminary Analysis, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on “facts available” pursuant sections 776(a)(1) and (a)(2)(A) of the Act for these final results. *Id.* at 4. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Despite being given multiple opportunities, the GOC declined to provide the requested ownership information for Wireking’s suppliers. *Id.* at 4-5. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In these final results, we continue to apply the adverse inference that the steel strip suppliers in question are “authorities” within the meaning of section 771(5)(B) of the Act. *Id.*

4. *GOC – Zhuhai Farmer Training Subsidy Program*

The GOC provided a partial response to the questions regarding this program, which was discovered in the course of this administrative review. Specifically, the GOC did not respond to the usage questions included in the questionnaire. *See* the Department’s Supplemental Questionnaire (December 28, 2011) at 3 (referencing the Department’s Original Questionnaire at questions G.1.(d) through G.2.(d) in Section II of Appendix 1).



Consistent with our findings in the Post-Preliminary Analysis, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on “facts available” for these final results pursuant to section 776(a)(2)(A) of the Act. *See* Post-Preliminary Analysis at 4. We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit usage information, the GOC did not cooperate to the best of its ability in this review. *Id.* at 4. We are continuing to apply the adverse inference that the program is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. *Id.*

#### Changes Since the Preliminary Results

The Department has made the following changes in its determination since the *Preliminary Results*:

1. In the Post-Preliminary Analysis, we found the Zhuhai Farmer Training Subsidy Program to be countervailable. *See* Post-Preliminary Analysis at 12-13. This program was used by NKS, and we added the amount we calculated for this program to NKS’s overall subsidy rate. We have continued this treatment in these final results. *See* Issues and Decision Memorandum at “GOC - Zhuhai Farmer Training Subsidy Program.”

2. In the Post-Preliminary Analysis, we found an additional supplier of wire rod to Wireking to be an authority within the meaning of section 771(5)(B) of the Act. *Id.* at 12. We have continued this treatment in these final results. Thus, we have recalculated Wireking’s rates under the GOC’s provision of wire rod for less than adequate remuneration (“LTAR”). *See* Issues and Decision Memorandum at Provision of Wire Rod for LTAR, and Comments 4 and 5.

3. In the Post-Preliminary Analysis, we found the GOC’s provision of steel strip for LTAR to be countervailable. *Id.* at 9-11. This program was used by NKS and Wireking, and we

added the amounts we calculated for this program to NKS's and Wireking's respective overall subsidy rates. We have continued this treatment in these final results. *See* Issues and Decision Memorandum at Provision of Steel Strip for LTAR, and Comments 4 and 6.

4. We have added Japanese wire rod export prices sourced from the World Bank to the calculated average of the wire rod prices used as the wire rod benchmark price in the *Preliminary Results* calculations. *See* Issues and Decision Memorandum at Provision of Wire Rod for LTAR, and Comments 4 and 5.

For a full discussion of these changes, *see* the Post-Preliminary Analysis and the Issues and Decision Memorandum.

#### Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated individual *ad valorem* subsidy rates for mandatory respondents, Wireking and NKS.

For the non-selected respondents which responded to our requests for Q&V information for purposes of respondent selection (*i.e.*, Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia) ("Leader Metal"), Hangzhou Dunli Import and Export Co., Ltd./ Hangzhou Dunli Industry Co., Ltd. ("Hangzhou Dunli") and Hengtong Hardware Manufacturing (Huizhou) Co., Ltd. ("Hengtong")), we have followed the Department's practice, which is to base the margin on an average of the margins calculated for those companies selected for individual review, excluding *de minimis* rates or rates based entirely on AFA. *See, e.g., Certain Pasta From Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 18806, 18811 (April 13, 2010), unchanged in *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386 (June 29, 2010). Therefore, we have assigned to Leader Metal, Hangzhou Dunli, and Hengtong the simple average of the

rates calculated for Wireking and NKS. We have used a simple average rather than a weighted average because weight averaging the rates of the mandatory respondents risks disclosure of proprietary information.

For the non-selected respondents which did not respond to our requests for Q&V information (*i.e.*, Jiangsu Weixi and Asia Pacific CIS), we are applying an AFA rate, as described above.

We find the net subsidy rate for the producers/exporters under review to be as follows:

<b>Producer Exporter</b>	<b>Net Subsidy Rate</b>
Guangdong Wireking Housewares & Hardware Co., Ltd.	21.48%
New King Shan (Zhu Hai) Co., Ltd.	7.85%
Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia)	12.35%
Hangzhou Dunli Import and Export Co., Ltd./ Hangzhou Dunli Industry Co., Ltd.	12.35%
Hengtong Hardware Manufacturing (Huizhou) Co., Ltd.	12.35%
Jiangsu Weixi Group Co.	264.09%
Asia Pacific CIS (Wuxi) Co., Ltd.	264.09%

### Assessment Rates

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection (“CBP”) 15 days after publication of these final results of review.

#### *Oven Racks*

For certain oven racks from the PRC entered, or withdrawn from warehouse for consumption from September 9, 2009, through December 31, 2009, the Department will instruct CBP to assess CVDs at the rates applicable to each company shown above and to liquidate such entries. Entries of certain oven racks occurring before September 9, 2009, were already liquidated at the time of the CVD order due to the ITC’s finding of threat of material injury on certain oven racks. *See CVD Order*, 74 FR at 46974-75.

#### *Refrigeration Shelving*

For certain refrigeration shelving from the PRC entered, or withdrawn from warehouse, for consumption from January 7, 2009, through May 6, 2009, and September 9, 2009, through December 31, 2009, the Department will instruct CBP to assess CVDs at the rates applicable to each company shown above and to liquidate such entries. Entries of certain refrigeration shelving occurring during the period May 7, 2009, through September 8, 2009, were not suspended for CVD purposes due to the termination of provisional measures. *See CVD Order*, 74 FR at 46974-75.

### Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated CVDs in the amounts shown above. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated CVDs at the most recent company-specific or all-others rate

applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested and completed. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_April 4, 2012\_\_\_\_\_  
Date

## **APPENDIX**

### **List of Comments and Issues in the Issues and Decision Memorandum**

#### **General Issues**

1. Legal Authority to Apply the CVD Law to the PRC
2. Whether the Final Results Must Account for the Imposition of Double Remedies
3. Whether the Department's Investigation of the Provision of Wire Rod and Steel Strip for LTAR Met the Initiation Standard
4. Whether Application of AFA for the Wire Rod and Steel Strip LTAR Programs Is Supported by the Record and Consistent with U.S. International Obligations
5. Benchmark Used for Wire Rod

#### **Company-Specific Issues**

6. Whether CVDs Should Apply to Wireking's Purchases of Steel Strip, Which is Not Consumed in the Production of the Subject Merchandise
7. Whether Cash Deposit and Liquidation Should Reflect Names and Translations of Names Used by NKS for Exportation of Goods to the United States
8. Whether the Department Should Have Found NKS Received a Subsidy from City Maintenance and Construction Taxes and Education Fee Surcharges

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